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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
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Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Treatment of Operator Services Under Price Cap Regulation	)	CC Docket No. 93-124
	)	
Revisions to Price Cap Rules for AT&T	)	CC Docket No. 93-197

AMERITECH COMMENTS IN RESPONSE TO
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

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AMERITECH COMMENTS IN RESPONSE TO SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Ameritech[1] submits these comments in response to the Commission's Second Further Notice of Proposed Rulemaking in the Commission's local exchange carrier ("LEC") price cap performance review proceeding.[2]

I. INTRODUCTION AND SUMMARY.

In the Second FNPRM, the Commission is considering specific changes to interstate access price regulation and that would permit increased pricing flexibility under certain circumstances. Such an inquiry is clearly appropriate and consistent with the Commission's statutory role in facilitating the availability

[1] Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

[2] *In The Matter of Price Cap Performance Review for Local Exchange Carriers, Treatment of Operator Services Under Price Cap Regulation, Revisions to Price Cap Rules for AT&T*, CC Docket Nos. 94-1, 93-124, 93-197, Second Further Notice of Rulemaking (94-1), Further Notice of Proposed Rulemaking (93-124), and Second Further Notice of Rulemaking (93-197), FCC 95-293 (released September 20, 1995) ("Second FNPRM").

> to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges. . .[3]

Although price cap regulation of LECs has been in effect for only five years and, in many respects, has worked quite well, the Commission is correct in concluding that significant improvements can be made to its incentive regulatory model. Ameritech agrees with the Commission that its public policy goals can be furthered and, particularly, consumers benefited by modifications which would: (1) encourage market-based prices; (2) encourage efficient investment and innovation; (3) encourage competitive entry in the interstate access and related local exchange markets on an economically efficient basis; and (4) regulate noncompetitive services in the most efficient and least intrusive way.[4]

Several changes to the Commission's "baseline" price cap plan for LECs are appropriate regardless of the competitive environment faced by the individual carrier. In particular, the Commission's treatment of new services should be substantially modified to encourage innovation. The term "new service" should be restricted to new functionalities that add to a customer's range of options. In addition, expedited "Track 2" treatment with confidential treatment of cost support should be permitted for those new services that are not mandated by the Commission. In addition, no separate waiver or finding should be required for the introduction for new switched access rate elements.

[3] 47 U.S.C. §151.

[4] Second FNPRM at ¶1

Alternative pricing plans ("APPs") should be permitted to be filed on an interim basis (for no more than 180 days) on 14-days' notice and without cost support. To make the APP permanent, the LEC would have to make a restructure filing utilizing actual demand data from the APP's initial 90 days.

The Commission should avoid placing in advance any detailed restrictions on ICB arrangements but rather, because these situations tend to be unique, examine each situation on its merits.

The notice period for restructured filings should be reduced to coincide with the notice requirement applicable to normal in-band filings.

And, finally, the lower service band index limits should be eliminated as an unnecessary discouragement to efficient pricing. Existing upper band limits constitute sufficient safeguards against predatory conduct so that no more restrictive cap is necessary for those LECs that should decide to take advantage of any future absence of price floors.

In addition, however, streamlined regulation of LEC services is appropriate -- including presumptively lawful tariff filings on 14-days' notice with no cost support and including contract pricing capabilities -- based on an analysis similar to that used by the Commission in the case of AT&T. Examining all of those factors in light of the facts applicable to LEC access services reveals that supply elasticity is the cornerstone to an analysis of competition for LEC services.

Ameritech proposes two alternative tests of supply elasticity for the purposes of considering LEC streamlining requests. First, the Commission should find that supply elasticities are high if competitive facilities are available to customers representing at least 25% of all access traffic in the relevant market and that those facilities can accommodate immediately at least one fifth of the traffic represented by those customers. As a second test, the Commission should find that supply elasticities are high if: (i) certain conditions, that will ensure that local exchange competitors have a viable opportunity to enter and compete in the marketplace, have been met, and (ii) the viability of competition is corroborated by the presence of at lest one certified competitive local exchange carrier offering service in the geographic area in question. The relevant geographic market should not be based on the pricing zones currently embedded in LEC access tariffs. Rather, the relevant market should be any group of contiguous wire centers in which the appropriate criteria are met.

Finally, nondominant treatment of relevant LEC services should flow naturally from streamlining since the "substantial competition" test for streamlining in a particular market effectively involves a finding that the carrier does not have market power.

II. SEVERAL CHANGES TO THE "BASELINE" PRICE CAP PLAN ARE APPROPRIATE REGARDLESS OF THE COMPETITIVE ENVIRONMENT FACED BY THE PRICE CAP LEC.

As the Commission noted in the Second FNPRM, several changes to baseline price cap regulation should be implemented regardless of the amount or type of competition faced by the LEC. Such changes would remove any existing disincentives to the introduction of new services and to efficient investment and would permit pricing on a more economically appropriate basis.

A. <u>The Commission's Treatment of New Services Should Be Substantially Modified to Encourage Innovation.</u>

The Commission correctly expressed concern that the current rules governing the introduction of new services are time-consuming and burdensome and may actually impede the development and introduction of new services.[5]

The Commission has long espoused as one of its goals the encouragement of the introduction of innovative new services. In fact, price cap regulation for LECs was viewed by the FCC as a means of furthering this goal.

> Price cap regulation should spur innovations that result in consumers enjoying a wider range of high quality services at cost-effective prices. This spurred innovation should occur because, quite simply, carriers operating under price caps can make more money in the short term than under existing regulation if they respond to consumer demand for more and better services.[6]

Although the goal was a noble one, the treatment of new services under price caps for LECs has done everything but support the introduction of innovative new services. The rules for filing new services under price caps have changed several times and have only become more complicated and restrictive, despite the fact that simplification of regulation was one of the Commission's justifications for adopting price caps in the first instance.

Today, new services are subject to the "flexible" cost-based approach articulated in the Commission's order in the Part 69 ONA proceeding. Under this

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[5] Id. at ¶33. *See also, In The Matter of Price Cap Performance Review For Local Exchange Carriers,* CC Docket No. 94-1, First Report and Order, FCC 95-132, 10 FCC Rcd. 8961 (released April 7, 1995) ("First Report and Order") at ¶¶ 398-402.

[6] *In The Matter of Policies and Rules Concerning Rates for Dominant Carriers,* CC Docket No. 87-313, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 89-91 (released April 17, 1989) ("Price Cap Order") at ¶43.

approach, LECs are required to describe and justify overhead loadings and are permitted to include a risk premium only if they can "provide evidence of comparably risky undertakings by firms in relevant industries, together with the cost of capital associated with the undertakings."[7] Tariffs are filed on 45 days notice. That these restrictions constitute a disincentive to the investment and development of new services goes without saying.

In adopting price caps for LECs, the Commission embraced the goal of encouraging innovation and cost effectiveness.[8] However, applying a regulator-managed, cost-plus approach to new services significantly undermines that goal by stifling innovation and fostering inefficiency. The Commission itself has found that the potentiality of "encouraging innovation and cost-effectiveness...militates in favor of flexible treatment of these [new] services."[9] Because of the unavoidable economic distortions it causes, a rigid pricing approach to optional new LEC services "stifles" innovation. Therefore, the Commission initially and correctly concluded that pricing flexibility for new services would "strengthen carrier incentives to innovate."[10]

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[7] *In The Matter of Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, and Policy and Rules Concerning Rates for Dominant Carriers,* CC Docket Nos. 89-79 and 87-313, Report and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, FCC 91-186 (released July 11, 1991) ("Part 69 ONA Order") at ¶¶42-44.

[8] *In The Matter of Policies and Rules Concerning Rates for Dominant Carriers,* CC Docket No. 87-313, Second Report and Order FCC 90-314 (released October 4, 1990) ("LEC Price Cap Order") at ¶¶31-33.

[9] Price Cap Order at ¶518.

[10] LEC Price Cap Order at ¶319.

While some might argue that the Commission's current rules do allow LECs the "flexibility" to determine the most economically correct approach to determine cost, the Commission is, as a practical matter, still called upon to review that decision in the tariffing process. Moreover, the rules still require accounting cost-plus pricing, which is inappropriate in the context of optional new services. This kind of regulatory second-guessing unnecessarily distorts the market, ultimately making the regulator, instead of the market, the arbiter of price.

Rather, letting the market function to set the price ceiling of optional new services is completely consistent with the Commission's goals for incentive regulation embodied in price caps. Price caps was designed not only to encourage LECs to implement new technologies to increase efficiency, but also to bring customers the fruits of those technologies by permitting LECs the ability to price services to reflect economic reality.[11] It is only in this later aspect that price caps can operate to encourage LECs to introduce truly new and innovative options and functionalities.

In that regard, the vision of price caps will have been completely subverted if regulation unnecessarily burdens and delays the introduction of new services. Under the current rules, in order to justify a market rate, in many cases LECs will have to assume the virtually impossible task of showing "comparably risky undertakings by firms in relevant industries, together with the cost of capital of those [individual] undertakings."[12] It is not clear how LECs are expected to obtain

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[11] *Id.* at ¶35.

[12] Part 69 ONA Order at ¶43.

cost of capital information on individual service offerings of other firms. Moreover, investment for new services will have to have been made well in advance of the tariff filing. The down-stream rate approval process embodied in the current rules carries with it a significant risk of adverse second-guessing of preliminary pricing decisions as potential customers for new services see an opportunity to use the process to drive rates lower -- even below the value of the service. In addition, the current approach discourages the introduction of new competitive services by LECs since it provides the opportunity for competitors to utilize the delay of the regulatory process as a competitive weapon to protect themselves from effective and fair competition or as a potential source of valuable competitive intelligence. In effect, the current regulatory process itself poses additional risk, constituting a serious disincentive to making the investment in the first instance.

It is with this in mind that Ameritech wholeheartedly supports the Commission's proposal to streamline and improve the process governing the introduction of new services.

1. New Service Definition.

The Commission has proposed that alternative pricing plans ("APPs") be excluded from the definition of new services. The Commission defines an APP as an optional different rate, term or condition applied to a service that is functionally indistinguishable from an existing service[13] and which customers can "self-select."[14]

[13] Second FNPRM at ¶20.

[14] *Id.* at ¶59.

Volume and term discounts are current examples of APPs and, because they "add to the range of options already available to customers," are considered new services whose tariff filings require full cost support.

In reality, however, because the underlying service or functionality remains the same, APPs represent something closer to restructurings than new services. The regulatory concern in a price cap environment should be with whether a service functionality, with all its price and term options, complies with the appropriate basket and band indexes. Therefore, APPs should be governed by rules similar to price changes or restructurings.[15]

The term "new service" should be restricted, therefore, to a new service functionality that adds to a customer's range of options.

2. Track 1/Track 2.

The Commission has proposed to bifurcate the treatment of new services. Specifically, the Commission has proposed "Track 1" for new services that need more careful regulatory scrutiny. Track 1 new services would remain subject to current notice, cost support, and other requirements.[16]

"Track 2" services would be subject to a shorter 14-day notice requirement to be accompanied by a showing that the new service rates will cover the direct costs of providing the service. The Commission proposes to eliminate all other cost support

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[15] See section I.B., *infra*.

[16] Second FNPRM at ¶¶45, 49.

requirements except those that the Commission may prescribe especially for a particular type of service.[17]

In concept, the Commission's proposal is a good one. However, certain clarifications and modifications must be incorporated into the framework before it will effectively reduce disincentives to LEC innovation.

First, the definition of Track 1 new services must be a clear one. Disputes over whether services are Track 1 or Track 2 could delay the implementation of a Track 2 service as long or longer than under current rules. Ameritech strongly suggests that the only new services that should be subject to Track 1 treatment are those services <u>mandated</u> by the Commission as necessary to promote a more competitive environment, where initiatives are not being taken or might not be taken by the LECs themselves.[18] Expanded interconnection and ONA services are perhaps the prime examples of services for which closer Commission scrutiny may be justified. Ameritech would submit that for all other services -- those services that price cap LECs <u>choose</u> to offer -- Track 2 treatment would be appropriate.

An advantage of this simple "bright line" dichotomy between Track 1 and Track 2 services is that no separate proceeding is necessary to determine the treatment appropriate to a particular new service offering. Since each tariff filing will be public, it will be apparent on the face of the filing whether the service is one which was mandated by the Commission. A more elaborate distinction between Track 1 and Track 2 services -- one which might necessarily anticipate Commission

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[17] *Id.*

[18] *Id.* at¶47.

involvement in the determination -- would entail the potential for unnecessary delay in the introduction of optional new services.

While the Commission has suggested other possible tests for Track 1 services, Ameritech recommends against them. The Commission has offered that any facility "essential" to a LEC competitor might be given Track 1 treatment.[19] However, Ameritech would note that the term is so nebulous as to be unadministerable, since the claim of essential-ness could probably be made in some sense for any LEC service. Moreover, the "Commission-mandated" test would cover any competition-enabling services that the Commission found to be so essential to its public policy goals that it requires LECs to offer them -- services such as interconnection and ONA.

Further, the Commission has inquired whether new services that do not have a close substitute in an existing service should receive heightened Track 1 scrutiny.[20] That, however, is not the case. Assuming that the Commission does not require a LEC to offer a new service, the fact that it is so completely new that the LEC is not offering even a close substitute should not operate to throw the service back into a regulatory mechanism that discourages its introduction in the first place. As noted below, if the service is completely new and if the LEC offers it voluntarily, the market will force the LEC to charge reasonably for the service.

Relaxed Track 2 treatment of optional new services is justified precisely because they expand customers' options. An essential quality of a new service is that

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[19] *Id.*

[20] *Id.*

all customers' current service options must remain unaffected. If a LEC is not required to introduce a new service, it will presumably be introducing the service because it wants customers to purchase the service. Under these circumstances, the LEC would have no undue pricing leverage. In other words, if existing services remain intact and if the Commission has not ordered the carrier to provide the service, the market itself will provide a reasonable upper limit on LEC pricing behavior. Customers can be made no worse off with the introduction of the new service regardless of the price at which it is offered. If the LEC wishes to sell the service, it must do so at a price that its customer perceives to be reasonable.

LEC assess customers are some of the country's largest and most sophisticated companies. If they believe that the price of the optional new service is excessive -- that it is out of balance with the value of the service or the prices of alternatives -- they can simply choose not to purchase the new service and, if applicable, to continue using whatever existing services they do use or to purchase a substitute service from a competitor. If a significant number of customers believe that the price is excessive, the LEC will be compelled by marketplace forces to lower its price in order to sell the service. That is simply the free market at work. Given that fact the new service is optional -- both from the LEC perspective and from the customer's perspective -- the LEC has no undue market power to force its customers to pay more for the new service than the amount that those customers perceive to be the value of the new service.[21] Therefore, no detailed regulatory scrutiny is needed to ensure that rates are "reasonable."

The Commission has proposed a 14-day notice period and reduced cost support for Track 2 services. Ameritech would not object to either of these requirements provided that LEC could submit the cost support information to the Commission on a confidential basis -- without prejudice to any party's right to make a request for the information under the Freedom of Information Act ("FOIA"). Making any cost information public without protection and prior to the introduction of the service leaves intact the opportunity for potential competitors to use the process to delay and to gain valuable information and for potential customers to game the process to force a better "deal."

A company's costs of providing new services is particularly sensitive since many new services are the result of technological breakthrough, development of improved processes, or extensive research and development, all of which are dependent upon projections of customer acceptance. Disclosing even summary cost data, which would typically include projected sales, would have the effect of divulging the company's plans and expectations for the new product or service. This information would aid others in developing their own market plans, alternative products, price responses, etc., with a much greater degree of certainty -- *i.e.*, at a much lower business risk. This, in turn, deprives the original developer of many of the benefits of taking on the risk of developing a new service in the first instance, and thus reduces the incentive to take such risks. Further, by knowing a carrier's cost of providing a service, a potential competitor can choose to enter only

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[21] This is true regardless of whether competitive alternatives exist. The federal government grants patents to innovators with the knowledge that the market will operate perfectly well to constrain the patent holder's ability to force customers to pay unreasonable amounts for the patented product or service.

those markets (either geographic or product) where its costs are lower, while avoiding those markets where it does not have a cost advantage, thus greatly minimizing the risk of failure. Such treatment of new service offerings greatly favors the firm which simply responds to new products rather than introducing its own. This in turn, creates a strong disincentive to innovation.

On the other hand, submitting cost information to the Commission 14 days in advance of tariff effectiveness would give the Commission's experts sufficient time to evaluate whether the rates cover direct costs. Moreover the procedure would not prejudice any party's rights to request the information under the FOIA.

3. Part 69 Waivers.

While the Commission has proposed to eliminate the need for a waiver of the Part 69 rules to introduce new rate elements for a new switched access service, it would modify Part 69 to permit the introduction of new services only based on a public interest finding.[22] Although the Commission would permit subsequent LECs to "piggy back" on an initial public interest finding obtained by the first LEC to introduce a particular rate element for a new service, the proposal nonetheless involves unnecessary regulatory delay.

For Track 1 services mandated by the Commission, presumably the Commission's order mandating the service would render any other public interest finding redundant. For other optional new services that expand the range of customers' choices, there is simply no reason to require a separate public interest

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[22] Second FNPRM at ¶¶ 66-73.

finding beyond the one inherent in the fact that customers' choices are increased. As USTA points out in its comments, a public interest finding with respect to new services is already inherent in the Communications Act:

> It shall be the policy of the United States to encourage the provision of new technologies and services to the public.[23]

Moreover, there is no longer any reason to treat switched access services any differently from special access services -- for which a waiver has never been required to introduce new services. The Part 69 rules, as originally written, were based on a snapshot view of the network and access environment at divestiture. Part of the rationale of the rules was to define the new world of interexchange access to facilitate the entry of competitors to AT&T and to preclude BOCs from adopting rate structures that specially favored their former parent. After more than ten years, with hundreds of switched access customers and with the expiration of the MFJ's "equal charge" rule, this amount of control is no longer necessary.

Quite simply, the rigid codification of switched access rate elements is out of date. This is particularly evident in the area of transport. Several LECs have had to request waivers in order to provide switched transport on the same SONET facilities being used for special access. Carriers have always had the ability to establish new rate elements and service offerings for special access without requiring a waiver of the Commission's rules. There is no longer any logic in continuing the requirement for switched access services.

B. Alternative Pricing Plans Should Be Treated Consistent With Price Cap Treatment of Price Changes and Restructures.

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[23] 47 U.S.C. §157(a).

In the Second FNPRM, the Commission made note of the proposals it had made for the treatment of APPs in the context of AT&T's price cap plan.[24] The Commission's discussion of APPs in the context of AT&T is instructional.

As the Commission itself noted, one of the main concerns over APPs offered by AT&T was with the potential ability for AT&T to create "headroom" -- the difference between the price cap indexes ("PCI") and the actual price index ("API") for any particular basket of price cap services -- and then to use that headroom to increase its basic schedule of rates for residential services without any loss of revenues. In the case of LEC access services, however, the concern about headroom should be substantially mitigated by the nature of the LECs' customers for interstate access services. Since by definition APPs are "self-selecting" and since LEC access customers are a relatively small number of sophisticated IXCs and large end-users who will be completely aware of their ability to "self-select" the APPs, it is unlikely that any potential headroom that might be created by APPs would result in disadvantaging any particular group of access customers.

Moreover, the Commission had proposed a mechanism for AT&T that would mitigate against the possibility of unreasonable headroom by requiring 90 days of actual APP experience before AT&T would be permitted to incorporate the APP into its price cap indexes. The incorporation would be based on the demand experience at the end of the 90 day period rather than on forecasted hypothetical demand.

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[24] 2nd NPRM at ¶¶56-57.

Ameritech proposes that a similar mechanism be employed for LECs under price caps. APPs -- which are merely optional pricing arrangements -- should be permitted to be filed on 14 days' notice and without cost support, provided that the APPs are scheduled by tariff to expire automatically no later than 180 days after the initial effective date.[25] In order to continue the APP beyond that time, the LEC would have to make a restructure filing sometime after the 90th day of the APP, utilizing demand data from the 90-day period. The restructuring would have to be filed with an effective date no later than the 181st day after the APP was first introduced.

Since an APP is essentially a pricing option, treating the APP together with the remaining pricing options available to customers for the underlying service as a restructure is consistent with the price cap model. The rates/revenues in total would be subject to appropriate basket and band limitations. To that extent, costs would continue to be irrelevant. Since an APP is an "option," there should be no concern that a LEC would use an APP to increase rates in a manner that would result in the LEC's exceeding price cap index limitations. That there should be no downward limit on an APP is consistent with the Commission's preliminary finding in the Second FNPRM that lower pricing band limits should be eliminated.[26]

Further, there should be no *a priori* restrictions with respect to the type of permissible APPs. Clearly, volume and term discounts are appropriate. They are

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[25] Ameritech suggests 180 days in order to facilitate the use of 90 days of demand data in the permanent filing.

[26] *See*, Second FNPRM at ¶¶ 75, *et. seq.*, and section II.E., *infra*.

now common in the industry and have become accepted from both the LEC provider standpoint and the access customer standpoint.

Similarly, "growth" discounts are another type of APP that should be permitted as well. Specifically, these are pricing mechanisms that can be of significant benefit to smaller carriers who have no immediate prospect of generating the types of volumes that larger carriers may be able to produce to qualify for volume discounts. Moreover, growth discounts can provide additional economic incentives for these carriers to grown their businesses -- essentially stimulating the efficiency-generating behavior that justifies the discount.

C. <u>The Commission Should Avoid Imposing in Advance Any Detailed Restrictions on ICB Arrangements</u>.

In the Second FNPRM, the Commission spoke of an increase in the number of individual case basis ("ICB") tariff filings, which the Commission considered generally "precursors to new service offerings."[27] As the Commission noted, ICB pricing is usually used for services that the carrier has no experience in providing and that are unlike any existing service, so that the carrier has no basis on which to develop generally available rates. The Commission also noted that ICB pricing has been permitted for special construction offerings involving one time, nonrecurring charges for construction activity.

The Commission proposed specifically to require

> a LEC seeking to offer a <u>common carrier service</u>, except for special construction, at ICB rates to show in the supporting documentation that the service is so unlike any existing service, that the LEC would

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[27] Second FNPRM at ¶ 61.

have no reasonable basis to develop generally available rates.[28] (Emphasis added.)

In response, Ameritech would note that the Commission's discussion must necessarily be restricted to common carrier services. As the Court of Appeals for the District of Columbia Circuit indicated, the Commission does not have the authority to impose common carrier requirements on non-common carrier services, even if they are offered by otherwise common carriers.[29]

Assuming, however, that the Commission is talking about concededly common carrier offerings, Ameritech suggests that some of the restrictions proposed by the Commission are inappropriate. Specifically, the Commission has suggested that, when a carrier has more than two customers for an ICB common carrier service or has provided the service for six months or more, it should have sufficient experience to be required to develop averaged rates.[30] Ameritech suggests that that view may involve some oversimplification. For example, two customers for a particular service may not afford the carrier sufficiently diverse experience with costs to enable it to develop an averaged rate that would be reasonable in most other circumstances. Furthermore, simply providing a service to one or two customers for six months or more, again, does not necessarily guarantee sufficient experience with a variety of circumstances that may be necessary to develop averaged rates that would be reasonable, from both customer and carrier perspectives, across a study area. In addition, requiring the filing of averaged tariffs after only two customers or

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[28] *Id.* at ¶ 65.

[29] *Southwestern Bell Telephone Company, et al. v. FCC,* 19 F.3d 1475 (D.C. Cir. 1994).

[30] Second FNPRM at ¶ 65.

only six months may result in the unnecessary creation of general rates for a service for which there is no demand.

Instead, the Commission should monitor ICB common carrier offerings and evaluate each situation on its own merits. Implementing hard and fast rules could discourage carriers from meeting the needs of their customers.

D. The Notice Period for Restructured Filings Should Be Reduced.

In the Second FNPRM, the Commission suggested that the danger of unreasonably high restructured rates has become less likely since the inception of price caps and that the current required 45-day notice period for restructured filings may be unnecessarily long. The Commission suggested that two different reduced notice periods be adopted -- 15 days for rate "increases" and 7 days for rate "decreases."[31]

The Commission is correct. Very few issues have resulted from restructured filings. Rather, the calculations for restructurings are fairly straight-forward and easily reviewable. Given that fact, substantially reducing the notice periods for restructured filings seems to be appropriate. Instead of creating a separate notice period for restructuring, the Commission should merely utilize the notice period applicable to in-band rate charges. In essence, a restructuring is simply another form of in-band filing. Since the support required for a restructuring is relatively uncomplicated, no longer notice period is necessary.

E. The Lower Service Band Index Limits Should Be Eliminated.

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[31] *Id.* at ¶ 51.

Ameritech supports the Commission's specific proposal to eliminate the lower service band limits in the price cap plan.[32] The Commission correctly notes that the change would result in more efficient pricing, enhanced competition and would not adversely affect ratepayers. The Commission recognized in some cases that the lower band limits keep LEC rates at an artificially high level. As the Commission noted:

> In those instances, inefficient entry may be encouraged and new or existing LEC competitors have no incentive to price their services at cost. Instead, they will price their service just enough below the LEC price to attract customers. If the lower service band limit were eliminated, the LECs and their competitors would be able to engage in true competition and bring prices down toward cost immediately.[33]

The Commission, however, went on to inquire whether it should impose a 1% upper limit on any service category or subcategory in which a LEC makes price reductions pursuant to the pricing flexibilities in the Second FNPRM.[34] Such a requirement is not necessary. As the Commission noted, the existing upper band limits and the price cap itself constrain LECs' ability to successfully predatorily price -- *i.e.*, to lower prices below cost in order to thwart competition and then raise them substantially above cost after competitors have been driven from the market.[35] Moreover, "below cost or predatory prices could still be challenged through a petition against a tariff filing or the formal complaint process."[36]

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[32] *Id.* at ¶75.

[33] *Id.* at ¶ 83.

[34] *Id.* at ¶ 105.

[35] *Id.* at ¶83.

[36] *Id.*

F. These Changes Are Appropriate Regardless of the Competitive Situations Faced By The Price Cap LEC.

The Commission tentatively concluded in the 2nd FNPRM that various changes in the price cap model should be implemented regardless of the level of competition faced by the affected LEC. The Commission stated:

> [B]ecause we believe these proposals will facilitate more efficient pricing by LECs and remove incentives for inefficient entry, we tentatively conclude that they need not be conditioned on a competitive showing.[37]

Nevertheless, noting that some parties may ask the Commission to condition price cap changes on a competitive showing, the Commission sought comment on what type of showing should be made, if one is ultimately required.

As discussed above, certain changes need to be made to the price cap regime, irrespective of the degree of competition LECs face. Current price cap rules erect needless barriers to innovation and the introduction of new services. They also result in suboptimal pricing of services. These deficiencies create distorted economic signals that ham consumer welfare. For example, as demonstrated above, the Commission's treatment of new services actually impedes both the development and introduction of such services. Likewise, the anachronistic Part 69 waiver process needlessly delays the introduction of new rate elements. Competition or no competition, changing the rules in these areas is in the public interest and consistent with the Commission's stated price cap goals.

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[37] *Id.* at ¶ 34.